-----Original Message-----
From: lynne krasnow
[mailto:lynne.krasnow@mercury.akctr.noaa.gov]
Sent: Tuesday, May 13, 2003 3:54 PM
To: Willis Chuck
Subject: Cougar SIR

Ok, it's finally happening, I'm looking at the Cougar SIR in detail so I can include a discussion of effects of the turbidity event in the env. baseline section of the Wmette Project biop. As a result, I might be able to have a comment letter to you in the next few weeks (allowing time for chaos due to FCRPS stuff). I assume you still want our comments for the record. But would they be in time for you to make edits in a "final" version? If not, I won't waste time pointing out that, even though water temps in the South Fork below Cougar "never exceeded 60 degrees F" (p. 6), the recommended maximum for salmonid spawning is 55 degrees F. I don't think it's appropriate to say that water quality in the South Fork below the reservoir is "excellent," at least not from the point of view of chinook spawning and incubation. I thought that the high temps during incubation was one of the main reasons for the WTC project.

Obviously, I haven't gotten very far. So this is a good time to find out how any NOAA Fishery comments would be used.

Thanks.

Lynne

February 21, 2003

District Engineer
U.S. Army Corps of Engineer District, Portland
Attn: CENWP-PM-E
P.O. Box 2946
Portland, OR 97208-2946

The McKenzie Watershed Water Quality Monitoring Committee (MWWQC) appreciates the opportunity to comment on the Draft Environmental Assessment and Draft Supplemental Information Report for the Willamette Temperature Control Project (WTCP) at Cougar Dam, Public Notice CENWP-PM-E-03-01. The McKenzie Watershed Council requested (decision November 2002) that the MWWQC, a subcommittee of the Council, review the SIR and provide comments. Please note that following comments come from the MWWQC and not the Council. The MWWQC is comprised water quality, watershed and environmental technical specialists, hydrologists, and other technical disciplines, and are from many of the Partners organizations that comprise the McKenzie Watershed Council. As you already know, many of the individual Partner organizations support the WTCP.

The MWWQC has a number of comments and clarifications to offer on the SIR and EA. Many of the comments are framed in a series of questions the MWWQC considered in its review. The Committee encourages you to consider the comments in the final documents supporting the planned action.

1. Has the Corps provided a thoughtful range of alternatives to manage the reservoir for the balance of the project? The Committee believes the Corps has provided a sufficient range of alternatives to manage the drawdown for the next several years. It is clear that the Corps is making an effort to minimize turbidity and its impacts. The preferred option (LP2) is explained and supported. However, there is no discussion of adaptive management for 2004, which may benefit from additional information obtained in 2003. For example, the high water period of January 03 is a prime example of how the Corps adaptively managed the reservoir. The Corps need more discussion on adaptive management scenarios and "emergencies" like January 03.

While the Corps outlines potential measures to decrease turbidity in the pool by reducing erosion of exposed sediments, there is no discussion of what activities these might consist of. The Corps should look into identifying areas of high slumpage potential and targeting those areas for re-vegetation or other stabilization measures. These same measures could also be beneficial as fish habitat when the reservoir is full. The Corps analysis may suggest that these measures may not be feasible, but at least they have included them in the evaluation of options to control turbidity and potential releases of DDT.

Overall, the MWWQC supports keeping the reservoir pool near the 1400-1450 ft elevation but not in absence of addressing the above comments.

2. Are there concerns for use of "surrogate" data for suspended sediment analysis? The approach used in the SIR appears adequate to produce "gross estimates" of sediment discharge from Cougar Dam. Given the fine grain size in the Cougar sediment, the sediment transport analysis using the SSC-T relationship from Mehama probably errors on the low side. The Committee is encouraged that the Corps has contracted with the USGS to study the SSC-T relationship in the McKenzie River which will allow for these original estimates to be corrected at a future date. Correlations obtained from North Santiam data are likely not different enough from that of the McKenzie for these purposes. However, there is no discussion of the development of the sediment concentration/turbidity coefficient (pg 29), only that it was "concluded" by the Corps.

Please note that in Section 7.5, there is conflicting information about sediment deposition into the river. One statement suggests most all of the sediment was deposited in the South Fork. Another statement indicates that sediment was suspended and passed downstream.

3. Are the recommendations on pages 38 and 39 adequate to protect water quality? The Committee believes the recommendations cannot insure that there is no risk to water quality in terms of sediment, and turbidity with regard to state standards. However, it is likely that a broad range of commonly employed construction site erosion control measures need to be explored for their feasibility. Costs for these measures would range from modest to significant, but many are tried and true erosion control techniques. The Committee sees no mention of the following techniques:

- Bed/band scour control on reservoir inflow, such a bank armoring
- Establishment vegetation, where feasible, immediately above the 1450' level to counter wave-driven erosion

Overall, the Committee does believe that nearly all measures that are likely to have a meaningful impact in controlling the risk to water quality have been included and are adequate.

It should be noted that in Section 8.7, last paragraph that EWEB supplies municipal water to Eugene – not Springfield.

4. Is the monitoring data, post drawdown 2002, adequate enough to draw the conclusions of "no effect" that the Corps suggest? It does appear that the limited monitoring the Corps implemented post drawdown support the effects predicted in the original EIS. Regardless of the high turbidity, it seems indefensible to not have had more monitoring planned for a project of this scope and magnitude. Because of the paucity data and reactive nature of the monitoring, the Committee believes that the call of no effect from the 2002 drawdown is flawed, but to what magnitude we will likely never know due to the lack of foresight.

The Corps did underestimate, greatly, the impacts to the local economy. The Committee strongly encourages the Corps to continue to work with all affected parties to provide compensation for this situation and what may still to come.

5. Is the water quality monitoring program the Corps recommends in Appendix A sufficient? The Committee encourages the Corps water quality monitoring program to highlight the monitoring results for substances such as: diazinon, malathion, as well as DDT breakdown products of DDD and DDE. Leaburg Lake should be evaluated as a potential sediment sink with evaluation of sediment rates behind Leaburg Dam. In doing this, it may be advantageous to collect sediment cores to look at recent sediment versus historic sediment and relative DDT (and other contaminants) concentrations associated with those sediment layers.

The issue of introducing bioaccumulative pesticides is significant, given the sensitive species in the watershed. The type and location of monitoring is not specified in the SIR, and no mitigation actions, other than sediment minimization are suggested. The Committee is aware of the use of worms and other "lower" life forms to assess the tropic accumulation of DDT. This is commonly done in Asian countries. Maybe this could be a technique using river water downstream of Cougar to assess the level of DDT in the system?

Additional sampling for DDT is strongly encouraged by the Committee. Failure to detect DDT in a sample blank should trigger additional sampling, not just a determination that concentrations are low.

The Committee recommends a more serious consideration of downstream aquatic vegetation, which should be paid more attention in the SIR. The WTCP by its very design and purpose will influence aquatic vegetation density and species composition. The Corps should be able to make some predictions of what type of changes may occur based on the change in the river's temperature regime.

Outside of these comments, the Committee believes the monitoring program, with the added USGS work, is likely adequate.

6. Corps NEPA document contends that the proposed action would have no significant impact on the environment and that an EIS is not required. Still true? The Committee believes that the WTCP still should be an EA. This is because it is tiered to an existing EIS that discussed significant effects. It appears that further impacts in 2003 will be less than those experienced in 2002. The cursory data collected in 2002 appears to indicate that even though there was extended periods of high turbidity and sediment released to the McKenzie River, the actual impacts, according to the Corps, was minimal. It does appear that the Corps is taking necessary steps to reduce the effects to the environment for 2003 and beyond. These steps, in addition to the ones mentioned above as needing improvement, would suggest that an EA is sufficient. The MWWQC strongly encourages the Corps to examine these steps and implement where possible. In

absence of implementing these steps, the Corps should develop an Erosion and Sedimentation Control Plan for the project.

This concludes the McKenzie Watershed Water Quality Committee's comments on the draft documents offered for public review through Public Notice CENWP-PM-E-03-01. We appreciate your consideration of our comments and look forward to working with the Corps on the successful completion of this project.

Signed:

Jim Thrailkill on behalf of the MWWQC.

cc: McKenzie Watershed Council Partner Organizations
Alan Henning, USEPA
Bill Perry, ODEQ

Eugene Water & Electric Board

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February 18, 2003

Colonel Richard Hobernicht, District Engineer
U.S. Army Corps of Engineers, Portland District
Attn: CENWP-PM-E
P.O. Box 2946
Portland, Oregon 97208-2946

RE: CENWP-PM-E-03-01 (Issue Date: January 30, 2003)
Environmental Assessment and Supplemental Information Report
Willamette Temperature Control Project, Cougar Dam and Reservoir

Dear Colonel Hobernicht:

The Eugene Water & Electric Board (EWEB) appreciates this opportunity to indicate our support for the preferred reservoir management option for the remainder of the construction period at Cougar Reservoir, as identified in the Draft Environmental Assessment and Draft Supplemental Information Report referenced in Public Notice CENWP-PM-E-03-01. EWEB also supports the Corps' decision to contract with the U.S. Geological Survey (USGS) for ongoing evaluation of turbidity, suspended sediment and DDT releases from Cougar Reservoir and the relationship between those parameters. Finally, we would like to reiterate our overall support for the Willamette Temperature Control Project at Cougar Reservoir.

We have a number of comments and clarifications to offer on the draft documents referenced in the public notice. We would like our comments to be considered in the development of final documents supporting the planned action.

As a general comment to be considered in the finalization of all documents, EWEB believes that it is important to recognize the events that occurred at Cougar Reservoir during the rainstorm in late January. It is our understanding that in addition to the loss of the Rush Creek diversion, a number of other slides and soil slumps occurred in the exposed sediments, and a number of the tributaries to the South Fork McKenzie River established new courses through the exposed sediments. It is also our understanding that in response to these events- primarily the loss of the Rush Creek diversion- the Corps has decided to, at least temporarily, maintain the residual pool at an elevation of 1450 to 1460 feet. EWEB supports this decision and recommends that the Corps consider maintaining the residual pool at this elevation for the remainder of the project. The larger pool will keep additional sediments underwater and provide additional buffering for future turbidity events.

We have the following specific comments on the draft documents identified in the public notice:

Draft Amendment For NEPA

1. Section 3, Proposed Action. EWEB supports the proposed action.

2. Page 2, DDT. The EPA chronic water quality criteria for DDT is misreported as 0.0001 ug/L. The chronic water quality criteria for DDT is 0.001 ug/l.

3. Page 3, DDT. While it is true that DDT is hydrophobic and has little affinity for water, DDE is more water soluble and more likely to be found in the water column than DDT.

4. Page 4. There does not appear to be sufficient justification for the statement that "Spring storms could still result in increased turbidity below the dam but the turbidity will be of shorter duration." Consider replacing the word "will" with the word "should" to indicate the uncertainty inherent in the statement.

5. Page 6, EWEB. The Eugene Water and Electric Board provides the municipal water supply for Eugene and several small nearby communities. We do not provide municipal water for the residents of Springfield.

6. Page 8, Section 8. In describing the effects on EWEB's operations, indicate that "additional chemical usage and filtration was required." Power and staffing requirements were also increased, resulting in an overall increase to EWEB in the cost of producing potable water.

Draft Supplemental Information Report

7. Page 9, Section 4.6.3 Drawdown Water Quality-Other Parameters. The information as presented in this section is somewhat misleading. There are no ambient water quality criteria nor is there an MCL for diazinon. Consequently, its detection cannot be compared to established standards. The detection of malathion at 0.155 ug/l exceeds the EPA ambient water quality chronic criteria for malathion of 0.1 ug/l. EPA freshwater acute chronic standard for DDT is again misreported as 0.0001 ug/L. While malathion was detected at a concentration exceeding the EPA level of concern, EWEB agrees that the overall export of contaminants from the reservoir was minimal.

8. Page 10, Section 4.6.4 Summary. As indicated in the preceding comment, the statements made in this section are not accurate. There are no ambient water quality criteria for diazinon, and the detection of malathion at 0.155 ug/l exceeds the EPA ambient water quality chronic criteria for malathion.

9. Page 15, Section 5.2.2 BMPs After Drawdown. EWEB is interested in the details of the BMPs to be considered for implementation during 2003 and would like to be

included in the evaluation of potential BMPs to reduce turbidity coming from the reservoir.

10. Page 19, Section 7.1 Turbidity. The elevated turbidity during April and May 2002 at Hayden Bridge increased EWEB's cost of processing raw water by increasing the amount of chemicals and electricity used to process the water and increasing the filtration demands of the water, which increases staffing requirements. The increase in cost was especially significant as demand increased in late May and early June.

11. Page 20, Section 7.2.2 Suspended Sediment Concentration. EWEB believes that the three monitoring sites were located on tributary streams draining *into* Detroit Reservoir. The word "into" seems to have been left out of the sentence.

12. Page 22, Section 7.3 Sediment Sampling and DDT. While DDT is hydrophobic and has little affinity for water, DDE is more soluble and may be detected in the water column. It is important to continue looking for DDE in water below the dam.

13. Page 31, Section 8.1 Turbidity (Water Quality). See earlier comments on water quality parameters. EWEB believes that the ambient water quality chronic criteria for malathion was exceeded in one sample. Also, the word "oganochlorinated" is misspelled.

14. Page 32, Section 8.1 Turbidity (Water Quality). EWEB believes that it is more appropriate to indicate the inherent uncertainty in the analysis by stating that "Spring storms could still result in increased turbidity below the dam but the turbidity *should* be of shorter duration."

15. Page 35, Section 8.7 EWEB. The Eugene Water and Electric Board (EWEB) provides municipal water for Eugene and several small nearby communities. EWEB does not provide municipal water to the City of Springfield.

16. Page 36, Section 9.1 Evaluation/Mitigation. The increased turbidity in the McKenzie River during the late spring and early summer required EWEB to use additional chemicals and electricity for raw water processing. Additional filtration and more frequent filter backwashing were needed to filter the water. The overall impact to EWEB was primarily the additional cost for water processing.

17. Page 38: Section 10.1 Findings. EWEB had to temporarily increase chemical usage and filtration bed backwashing, which increased water processing costs and staffing requirements.

SIR Appendix A

18. Page A-15. EWEB supports the proposed plan for additional water quality monitoring for DDT. We believe that DDT breakdown products DDE and DDD should also be evaluated, and that the Corps should consider additional monitoring in the South Fork

and mainstem McKenzie for diazinon and malathion. Leaburg Lake should be considered as a potential sediment sink, and sedimentation rates and contaminant levels behind Leaburg Dam should be evaluated. We would also like to encourage the Corps to share the proposed plan with the ECC prior to implementation.

SIR Appendix B

19. Page 3, Previous Studies. Assuming that the 1996 sediment samples were analyzed for DDT, please provide the method detection levels for the analyses.

20. Page 7, Conclusion. Please evaluate and report on the correlation between DDT and TOC levels detected in the August sampling. Can a relative correlation between the two parameters be used to evaluate DDT loading based on observed levels of TOC?

21. Page 8, Conclusions. Are there any indications that the recent slides related to the Rush Creek diversion failure occurred in areas tested for DDT during the 2002 sediment studies?

22. Page 8, Conclusions. Has the Corps considered conducting settling tests on turbid water released from the dam to collect additional material for DDT analysis? This would provide information on the DDT load being released through high turbidity events such as occurred in late January 2003.

This concludes our comments on the draft documents offered for public review through Public Notice CENWP-PM-E-03-01. We appreciate your consideration of our comments, and look forward to working with the Corps of Engineers on the remainder of the Cougar project. Please feel free to contact me at (541) 984-4727 if you have any questions or concerns regarding our comments.

Sincerely,

Michael J. McCann
Environmental Specialist

c: Laurie Power, EWEB
Doug Wise, EWEB
Dick Helgeson, EWEB
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February 27, 2003 Via email, Certified Mail, Return Receipt Requested

Mr. George J. Miller
District Engineer
U.S. Army Corps of Engineer District, Portland
Attn: CENWP-PM-E
P.O. Box 2946
Portland, OR 97208-2946

RE: Need for Further NEPA Analysis in 2002 Draft EA Amendment for the Cougar and Blue River Reservoir Temperature Control Project

Dear Mr. Miller:

I wrote Colonel Butler last June regarding the need to do a Supplemental Information Report (SIR) for the Cougar Temperature Control Project. The Corps has now done that, along with issuing a draft Amendment to the Supplemental Environmental Assessment and FONSI, dated July 15, and November 30, 1999, respectively. The McKenzie River Guides Association presents the following comments regarding deficiencies in the current draft Amendment and SIR.

The Association continues to have major concerns with the effects that the construction of Cougar Reservoir has had on its members, the mainstem environment of the McKenzie River, and the communities on the mainstem. Turbidity concerns in the mainstem, and that pollution's economic fallout to the local community continue to be the Guide's major concern.

It is likely that the Corps has violated the National Environmental Policy Act (NEPA) by relying upon a fundamentally misleading economic analysis. Further, the Corps has erred in relying on incomplete and unsubstantiated data in coming to its conclusions that the economic losses from the recreational sector is not significant. This last error is based on the fact that the Corps both considered too large in economic area (i.e. all of Lane County) in determining whether the economic losses, resulting from the prolonged turbidity excursion, were substantial and the economic loss data relied on was only sporadic responses to questionaires. As is discussed, the Corps erred in determining the "context" of the significance because it erroneously determined for the local nature of the project that the economic hardships should be considered countywide, rather than in just the watershed affected. Lane County is one of the largest western counties in the State. It stretches about 200 miles in length. It was erroneous to attempt to compare the economic losses of the McKenzie recreational interests to those of a countywide economy.

As to the second criticism, even the agency, the Convention & Visitors Association of Lane County, (CVALCO), conducting the economic survey relied on by the Corps was critical of the survey's incompleteness and relayed this limited use caution to the Corps. And thus these errors warrant further evaluation and consideration of the significance of the economic losses from the project under NEPA requirements.

As was discussed last year, the "hard look" doctrine continues to applies to the Corps' further NEPA work. Neighbors of Cuddy Mountain v. U.S. Forest Service, 137 F.3d 1372, 1376 (9th Cir. 1998). To satisfy the requirement that it take a "hard look" at the consequences of its actions, an agency must engage in a "reasoned evaluation of the relevant factors" to ensure that its ultimate decision is truly informed. Greenpeace Action v. Franklin, 14 F.3d 1324, 1332 (9th Cir. 1992). An agency's failure to include and analyze information that is important, significant, or essential renders an EA inadequate. 40 C.F.R. § 1500.1 ("The information must be of high quality.") An agency's failure to use the most up-to-date information and tools available, or the inclusion of erroneous information, undermines the public's confidence in the EIS processand renders
it legally defective. Tribal Village of Akutan v. Hodel, 869 F.2d 1185, 1192 n.1 (9th Cir. 1989). Without accurate, up-to-date information, there is no way for the public or the agency to adequately assess the pros and cons of a proposed action. See California v. Block, 690 F.2d 753, 761 (9th Cir. 1982). Under CEQ regulation 40 C.F.R. Sec. 1508.14 (2000), an EIS must assess and discuss the secondary (socio-economic) effects of the project when effects are interrelated to the physical environmental effects. See Stop H-3 Ass'n v. Dole, 749 F.2d 1442, 1461 (9th Cir. 1984)(noting duty to evaluate socio-economic effects under prior regulation).

These fundamental NEPA principles apply to the economic as well as environmental analyses included in an EIS. See Animal Defense Council v. Hodel, 840 F.2d 1432, 1439 (9th Cir. 1988); Hughes River Watershed Council v. Glickman, 81 F.3d 437, 446 (4th Cir. 1996) ("For an EIS to serve these functions, it is essential that the EIS not be based on misleading economic assumptions."); 40 C.F.R. § 1502.23 (cost-benefit analysis). Agencies are required to ensure the professional integrity of all discussions and analyses in an EIS, including economic analyses. Id. §§ 1502.24, 1508.8 (The "effects" that an EIS must evaluate include economic impacts). Thus, an EIS that relies on misleading economic information or fails to include all relevant costs in its economic analysis violates NEPA, because it cannot fulfill NEPA's purpose of providing decisionmakers and the public with a valid foundation on which to judge proposed projects. See, e.g., ONRC v. Marsh, 832 F.2d 1489, 1499 (9th Cir. 1987).

In Hughes River Watershed Council, for example, the Fourth Circuit found that the Corps of Engineers violated NEPA because its EIS for a proposed dam construction project overstated recreation benefits, a defect which impacted 32% of the project's total economic benefits. 81 F.3d at 447. By overstating the economic benefits of the project, the EIS was unable to serve its function of allowing decision-makers to balance the environmental impacts and economic benefits of the project. Id. at 446-48. Similarly, in Van Abbema v. Fornell, in a challenge to a Corps of Engineers EIS for a coal transloading facility, the Seventh Circuit concluded that the economic

analysis relied upon inaccurate data, unexplained assumptions, and outdated reports. 807 F.2d 633, 640-42 (7th Cir. 1986). ("If the Corps bases its conclusions on entirely false premises or information, even when its attention is specifically directed to possible defects in its information, we would have difficulty describing its conclusions as reasoned . . . ."); see also Johnston v. Davis, 698 F.2d 1088, 1094 (10th Cir. 1983) (unqualified use of artificially low discount rate in economic analysis, even though legally required, resulted in misleading EIS that violated NEPA); Sierra Club v. Sigler, 695 F.2d 957, 975-76 (5th Cir. 1983) ("The Corps cannot tip the scales of an EIS by promoting possible benefits while ignoring their costs . . . . There can be no 'hard look' at costs and benefits unless all costs are disclosed.")

I. The Corps Economic Analysis Relying On Known Poor Data and An Inaccurate Assumption Is Not Defensible

The Corps full discussion of the economic impacts from the turbidity excursions in 2002 is only partially accurate. The draft Amendment to the EA states the following about the economic impact of Cougar drawdown:

> The 2002 Cougar drawdown had a negative effect on trout fly-fishing on the McKenzie River that was not anticipated or evaluated in the FR/EIS. On April 1, the Corps started drawing down Cougar Reservoir to install a multi-level intake tower, which would release water into the river at temperatures appropriate for threatened species of fish. That sent accumulations of clay into the river and turned it a brownish-gray color. ...
>
> The turbidity problem affected fishing guides, lodges, motels, gas stations, restaurants, and small grocery stores, according to the Convention and Visitors Association of Lane County (CVALCO). CVALCO , the McKenzie River Chamber of Commerce, and the river guides association mailed out a survey to lodge owners and other local business owners. It was called "Cougar Reservior Draw-Down Economic Impact Survey" and included questions about type of business, comparative gross revenues from 1999 to 2002 (or, change in gross revenues), customer counts (1999 to 2002), and cancellations or other declines in business attributable to turbidity of the McKenzie river or other Cougar Reservoir draw-down-related factors.

Draft Amendment to the EA, page 6; SIR at 35-36.

After summarizing the data, and noting, "[a] total of 27 businesses responded to the survey reflecting only a partial sampling of the overall impacts," id., the draft Amendment states:

> Locals indicate that these impacts have been difficult, particularly for small businesses that are very dependent on the summer tourism season. Some of the businesses operate near capacity for a relatively short season, and don't have the capacity to make up for early losses later in the season. There is local concern if the same impact recurs over the next few years, there will be more lasting damage to the local tourism economy.

Id.

Then, in conclusion, the draft Amendment, after summarizing the CVALCO survey, finds:

> While this may have caused temporary hardship for local residents, it is not regionally or nationally significant, given that the 2002 Oregon Employment Department Regional Economic Profile indicates that the Eugene MSA (Lane County) had a 2000 population of 323,950 people, with a per capita income of $25,584, resulting in total income of approximately $8.3 billion dollars in the regional area. Were these losses an underestimate, even doubled the losses would not be regionally significant.

Id. at 8.

The SIR contains essentially the same information, as it also relies extensively on the CVALCO survey for economic loss information. However, CVALCO staff has stated that they did convey the limitations of its survey to the Corps when it presented the results and did not expect the Corps to rely on such a scant survey. In a February 14, 2003 letter criticizing the Corps reliance on its data and press release, CVALCO states:

> Just 27 survey responses accounted for the losses reported by CVALCO. Those losses occurred during March-May of 2002. Reporting was not uniform (some surveys were partially blank). Some responses lacked financial data and indicated only that they were having to abandon their business, or included estimates of lost customers but not related financial impacts. CVALCO was very careful to stipulate in its release of data that results were based on a small response and not representative of total economic losses. Because the survey was distributed by mail from two different organizations and through the McKenzie River Reflections Newspaper, we don't know the size of the survey distribution or the response rate. Informal feedback indicated that many businesses along the corridor were not familiar with CVALCO and therefore chose not to disclose their financial information.

February 14, 2003 correspondence between CVALCO President and CEO Ms. Westlund and Corps' District Engineer (copy attached).

CVALCO concludes by stating:

> It is important that CVALCO's limited survey results not be misrepresented in your Supplemental Information Report as being indicative of total area economic losses. While we wish the survey had resulted in more comprehensive information, it clearly did not. The SIR should be revised to clarify this issue.

Id.

The creator of the survey has acknowledged serious limitations in its accuracy and representative sampling. Therefore, such information cannot be determined as being an actual measure of the total economic loss which the McKenzie River regional communities suffered. Further, in an attempt to note the deficiency, the Corps states "even doubled," seeming to believe that a factor of two was the correct factor to use. However, the Corps does nothing to explain why a factor of two was the appropriate one to use. The estimated loss could have been five times too low, ten

times too low, or even twenty times too low. The Corps has failed to give adequate reasoning why two, rather than twenty, is the appropriate multiplier to obtain the actual economic impact from the limited sample impact.

The Corps must only rely on valid data in making its determinations. It further must present this data in the EA when it attempts to use it. Idaho Sporting Congress v. Thomas, 137 F.3d 1146, 1150 (9th Cir. 1998). Relying on such poor data does not give the public the proper opportunity to comment on the accuracy of the actual effects attempting to be analyzed. Id.

Further, the Corps' economic impact estimate basis, differs from the known impacts that actually occurred and were described when they occurred. This was provided in last years Guides's correspondence. All of the economic information presented in last year's letter remains accurate and valid.

II. The Corps Context Of Location for Evaluating Significance Is Wrong

The Corps found, when evaluating the possible economic impacts countywide that such turbidity economic disturbances "would not be regionally significant." Draft Amendment at 8. "'Significantly' as used in NEPA requires consideration of both context and intensity. 40 C.F.R.§ 1508.27. "Context" in the regulations under "Significantly" is defined as follows:

> This means that the significance of an action must be analyzed in several contexts such as society as a Whole (human, national), the affected region, the affected interests and the locality. Significance varies with the setting of the proposed action. For instance, in the case of a site-specific action, significance would usually depend upon the effects in the locale rather than in the world as a whole.. Both short- and long-term effects are relevant.

40 § 1508.27(a).

Here, the Corps defined the "locality" or "locale" as Lane County. If it had used a smaller increment, such as Eastern Lane County or the McKenzie watershed area, the finding of no significance may have changed. Had it changed, the Corps would have needed to do further analysis on its current alternative to insure that the amount of turbidity generated by that revised alternative would not have a significant economic consequence on the McKenzie River communities.

There are two cases where the court determined that the "locale" that the agency had determined was appropriate, was too large. The most important, as it is controlling here, is Anderson v. Evans, 314 F.3d 1006 (9th Cir. 2002). In Anderson environmental and animal rights groups had challenged the Environmental Assessment done by NOAA Fisheries regarding the permitting of whale hunting by the Makah Indian Tribe. On appeal, the court found that the locale of whale population that the agency used to determine the impact for killed whales was too large. It required the agency to only consider the population of whales that actually returned to the Sound where the Makah wished to hunt. It overtuned the agency because the "context" locale was defined as too large a population. After dismissing that it did not matter that the whales may have

been a subspecies to the more abundant PCFA whales, the court explained the agency's second defense as:

> The EA describes the PCFA as composed of whales that move from one feeding area to another rather than staying in one locale for all the summer months. That some of the wahles who return, ... to the areas of the proposed hunt also visit other areas of the coast cannot, however, eliminate concern about the local impact. The fact remains that a majority of the fairly small number of whales identified in the Makah Tribe's hunting area have been there in previous years, wherever else they may have journeyed. Whether there will be fewer or no whales in the pertinent local area if the hunt depends not on whether the whales who frequent that area also travel elsewhere, but upon the opposite inquiry: whether the whales who heretofore have not visited the area will do so, thereby replenishing the summer whale population in the area, if some of the returning whales are killed.

Id. at 1020.

The court then discussed the reasoning for the local impacts requirements as follows:

> In short, the record establishes that there are "substantial questions" as to the significance of the effect on the local area. Despite the commendable care with which the EA addresses other questions, the EA simply does not adequately address the highly uncertain impact of the Tribe's whaling on the local whale population and the local ecosystem. This major analytical lapse is, we conclude, as sufficient basis for holding that the EA cannot survive the level of scrutiny in this case.
>
> And because the EA simply does not adequately address the local impact of the Tribe's hunt, an EIS is required.

Id. at 1021 (emphasis added).

The second case regarded the Army Corps of Engineers building a port on a Sears Island in Maine. Sierra Club v. Marsh, 769 F.2d 868 (1st Cir. 1984). The court reviewed the broad nature that the Corps had attempted to distribute the economic gains and overlooked the economic harm that would take place on the local island itself. The court discussed this error by stating:

> Fourth, the Corps dismiss the impact on 'upland habitat' as insignificant on the gorunt that there is adequate habitat elsewhere in the area. The force of this argument depends on the meaning of the ward "area." If the Corps means "elsewhere on Sears Island, " its conclusion is weak. The EA's indicate that 'full development' of the southern half of the island will increase the amount of upland habitat 'taken' from 4 percent ... to 23 percent. Since this latter figure is based on a calculation that counts as 'taken' only the land which is actually cleared for construction of buildings and parking lots, the percentage of 'upland habitat' that the development will render unsuitable for wildlife would likely be far higher. If the Corps means to include in the relevant "area" other land on the coast of Maine, it conclusion is more reasonable. Yet we doubt that the Corps can include so wide an area in its calculation. The CEQ's regulations stat that "in the case of a site-specific action, significance [of environmental effects] would usually depend upon the effects on the locale rather than in the world as a whole." 40 C.F.R. 1508.27(a) (1984). Here, the nature of

the action, and the geographical character of Sears Island, suggest that the appropriate "locale" is Sears Island and its immediate surroundings.

Id. at 881 (noting that evaluation of effects does not warrant a FONSI finding and an EIS is required).

Here, both like the local island habitat and the local whale population, the local impacted economic locale is communities along the McKenzie River. The Corps' economic determination that Lane County is the "locale" is wrong and unsupportable. Like areas along the coast of Maine were too large or the whale population that did not specifically migrate to the hunting area, the area of the full economy of Lane County is too broad an "locale" to be judging the significance of the economic impacts over.

Because of these flaws, the Draft EA and the SIR are unable to fulfill their chief mission, which is to give decision-makers and the public an opportunity to evaluate the pros and cons of the proposed action. Animal Defense Council, 840 F.2d at 1439. If any turbidity excursions begin of the nature of those last year, the EA will have insufficiently reviewed the local impacts of them and the Corps must do a Supplemental Environmental Impact Statement to address the local economic impacts to the McKenzie River communities and businesses from turbidity excursions. Alaska Wilderness Rec. and Tourism Assn. v. Morrison, 67 F.3d 723, 729 (9th Cir. 1995).

Thank you for your consideration of this information. Please respond to me with your decision whether the Corps will further evaluate the economic impacts on local communities to determine whether the economic and socioeconomic impacts are significant with realistic and accurate estimates. This needs to be undertaken unless the Corps can assure the public and my client that the turbidity impacts that occurred last year will not recur.

Sincerely,

William C. Carpenter Jr.
Attorney at Law

cc: Aaron Helfrich, President, McKenzie River Guides Association

February 14, 2003

District Engineer
U.S. Army Corps of Engineer District, Portland
Attn: CENWP-PM-E
P.O. Box 2946
Portland, OR 97208-2946

Re: Supplemental Information Report, Willamette Temperature Control Project, Cougar Reservoir, Lane County

Page 37 of the Supplemental Information Report indicates that the Convention & Visitors Association of Lane County Oregon, CVALCO, "...reported losses totaling about $88,656." The Report then compares this to total estimated population and earnings for the Eugene MSA, and indicates that if the CVALCO estimate were an underestimate, even doubling it would not be significant.

Just 27 survey responses accounted for the losses reported by CVALCO. Those losses occurred during March-May of 2002. Reporting was not uniform (some surveys were partially blank). Some responses lacked financial data and indicated only that they were having to abandon their business, or included estimates of lost customers but not related financial impacts. CVALCO was very careful to stipulate in its release of data that results were based on a small response and not representative of total economic losses. Because the survey was distributed by mail from two different organizations and through the McKenzie River Reflections Newspaper, we don't know the size of the survey distribution or the response rate. Informal feedback indicated that many businesses along the corridor were not familiar with CVALCO and therefore chose not to disclose their financial information.

Economic impacts from the Willamette Temperature Control Project at Cougar Reservoir extend far beyond the scope of high turbidity levels caused by the draw down last spring. The loss of the Reservoir itself from recreational use for several years, the obvious impact from the turbidity itself and the related negative media exposure, and the multi-year scope of the project leading to perceptions about river-related experiences being of diminished quality over several seasons have all hurt area businesses over an extended period of time.

It is important that CVALCO's limited survey results not be misrepresented in your Supplemental Information Report as being indicative of total area economic losses. While we wish the survey had resulted in more comprehensive information, it clearly did not. The SIR should be revised to clarify this issue.

Sincerely,

Kari Westlund
President & CEO

cc: Congressman Peter DeFazio
McKenzie River Reflections

Hamilton, Lynne D NWP

From: Miller, George J NWP
Sent: Friday, February 14, 2003 7:33 AM
To: Hamilton, Lynne D NWP
Subject: FW: Cougar Dam Project Folly

Comments on SIR for your action.

GEORGE MILLER
Project Manager
Planning, Programs, and Project
Management Division

-----Original Message-----
From: David R. [mailto:daverio@pacinfo.com]
Sent: Tuesday, February 11, 2003 4:11 PM
To: Miller, George J; Heidi.Y.Helwig@nwp01.usace.army.mi; Willis, Chuck
Cc: travis@willamette-riverkeeper.org; news@springfieldnews.com; mailto:Lowell.Watkins@state.or.us; mailto:michael.b.lambert@state.or.us; mailto:Mary.L.Hanson@state.or.us; mailto:Jeffrey.S.Ziller@state.or.us; info@ortrout.org; Badgley_Anne@fws.gov; mailto:conservation@mckenzieflyfishers.org; mailto:info@mckenzieflyfishers.org; donald.mcisaac@noaa.gov; kit.dahl@noaa.gov; Peter Sorenson; Dan Opalski; Bill Dwyer; Anna Morrison; Cindy Wheeldryer; Bobby Green; Peter DeFazio; Mary Gautreaux; Matt Cooper; jwilson; mstahlberg; Paul Engelking; Simon Guiterrez; Doug Heiken; KLCC; KVAL; news; news; Statesman Journal; KGW Portland; RivRef; Bob Wernick; Tim Hermach; dennis@suncountrytours.com; juine_chada@wyden.senate.gov; mailto:environment@news.oregonian.com; mailto:theresebottomly@news.oregonian.com; news@springfieldnews.com; dave-downing@or.nacdnet.org; Bob Cooper; Bob Gaurd; Peter Petricelli; ott@cdsnet.net; mhanten@morrisonslodge.com; dennis@suncountrytours.com; goodfshn@uswest.net; raft2fish@aol.com; cnjlodge@ptinet.net; pjdonovan@aol.com; info@gorafting.com; irv@roguefishing.com; raft@riveradventure.com; mathers@bendnet.com; sgsfish@aol.com; fishroe@cdsnet.net; ogpa@ogpa.org; Doug Quirk; Marnie.L.Allbriten@state.or.us; Brady.D.Callahan@state.or.us; Kendra.G.Callahan@state.or.us; Sue.M.Engwall@state.or.us; Christine.Mallette@state.or.us; David.C.MCALLISTER@state.or.us; Sally.Vachter@state.or.us; mailto:tom@efn.org; mailto:dburwell@ci.springfield.or.us; mailto:gal@efn.org; mailto:aolander@hmtt.com; mailto:lpeters1024@juno.com; mailto:Gary.E.Rayor@ci.eugene.or.us; mailto:erice@or.blm.gov; mailto:fsimmons@ci.springfield.or.us; mailto:pstcon@aol.com; mailto:thrail@fsl.orst.edu; mailto:PBartel46@aol.com; mailto:Mark.G.Wade@state.or.us; mailto:runyon@proaxis.com; mailto:jpallen@fs.fed.us; mailto:dandy@hopf.uoregon.edu; mailto:barb.blackmore@weyerhaeuser.com; mailto:ryland@mckenzieriver.org; mailto:bumstead@pacificu.edu; mailto:dougb@hsaeug.com; mailto:wade.l.stampe@usace.army.mil; mailto:patg@pacinfo.com; mailto:jeffrey.s.ziller@state.or.us; mailto:kfersch@callatg.com; mailto:%20mwstaff@callatg.com; kathie.eastman@mail.house.gov; editor@eugeneweekly.com; sgutierr@cmc.net; dtodd@darkwing.uoregon.edu; dmonk@oregontoxics.org; Lowell.Watkins@state.or.us; michael.b.lambert@state.or.us; Mary.L.Hanson@state.or.us; Badgley_Anne@fws.gov; donald.mcisaac@noaa.gov; kit.dahl@noaa.gov; mailto:Gary.E.Rayor@ci.eugene.or.us; mailto:dburwell@ci.springfield.or.us; mailto:tom@efn.org; Mcdowell, Jeffrey R; Phillips, William J; mailto:aaron@helfrich.com; mailto:robi8753@aol.com; mailto:cavefam@pond.net; mailto:loubentsen@yahoo.com; mailto:raft2fish@aol.com; mailto:rgsbryant@aol.com; mailto:dburwell@ci.springfield.or.us; mailto:stone51490@aol.com; mailto:digger@clipper.net; mailto:buglemin@iglide.net; mailto:pamjharris@aol.com; mailto:helfrichriver@attbi.com; mailto:helfrich@efn.org; mailto:fishor9446@aol.com; mailto:ken@helfrichoutfitter.com; mailto:tonyhelfrich@attbi.com; mailto:bobh@mckenzieriverfishing.com; mailto:justusoutfitters@aol.com; mailto:laingcom1@aol.com; mailto:pmgs99@aol.com; mailto:mckenzie2o@webtv.com; mailto:spruitt@oip.net; mailto:grob420@aol.com; mailto:sgsfish@aol.com; mailto:steele@proaxis.com; mailto:donwouda@cyberis.net; Ryland@mckenzieriver.org; David Raymond; mailto:jthrail@callatg.com; mailto:morrisette.sen@state.or.us; mailto:corcoran.sen@state.or.us; mailto:beyer.rep@state.or.us; mailto:hayden.rep@state.or.us; mailto:king.rep@state.or.us; mailto:walker.rep@state.or.us; tlonline@earthlink.net
Subject: Re: Cougar Dam Project Folly

To: George Miller
WTC Project Manager

Dear Mr. Miller,

February 11, 2003

I received a copy of the WTC - 'Environmental Assessment' as well as the 'SIR' downloaded from your web-site. I continue to see big problems in how various concerns are being addressed. While everyone can appreciate an easing of economic impacts from the project, this should not quietly mitigate the more important environmental concerns that have yet to be adequately addressed. How can the COE possibly know that these 'years' of clay silt releases lasting 1-3 months won't forever alter the river ecosystem? We already saw the changes in the river within the first Fall, months after the turbidity ceased. While you might improve the economic impacts for the short-term with earlier draw-downs, what good will this be if in 5 years we find it too late because the river ecosystem was forever altered?

While I previously raised issue about new underwater vegetation, which turned out to be 'Water Buttercup' (AKA Hornwort) that seems to be slowly taking hold along certain stretches of the McKenzie, I must raise concern about another related matter. Why the unusual bright green algae/moss we experienced in most of the McKenzie River? I think the answer is simple, it was able to take hold along the bottom because of the deposit of clay silt that coated the rocky bottom. The problem is, this clay 'adheres' to rocks & crevices. In all likelihood, this upcoming Summer's moss will be earlier and worse than last Summer. I fear this cycle may continue and increase exponentially as more vegetation establishes itself. WHY WASN'T THIS BRIGHT GREEN MOSS ADDRESSED IN THE 'SIR'?

Maybe what is needed is a glimpse into the future of what the bottom of the pristine McKenzie River may look like should this continued turbidity bombard the river for the next several years. Take a look at the South Fork Santiam River below Foster Reservoir. I don't think we want a river bottom clogged with slimy moss and other vegetation. Oh and by chance, isn't that also the harmless 'Water Buttercup' (AKA Hornwort) that takes everyone's fishing gear in the South Santiam? CAN YOU PROMISE US THAT IT'S NOT GOING TO HAPPEN HERE?

Don't let this become a situation where another COE project has screwed up a beautiful river because of alleged good intentions. You analyze all the details but tend to overlook the big picture. I fear this big COE project is falling into the same scenario. Problems at McKenzie River hatcheries will probably continue to worsen each year as well. Isn't there a link between the turbidity and the viral deaths in the Leaburg Hatchery?

Finally, I appreciated speaking with your Fisheries Biologist Mr. Willis, last Fall, but one very disturbing issue remains that has not been answered. ***Was there a massive fish kill within Cougar Dam during the initial draw-down?*** Right now the numbers do not correspond and I never received a reply to this. I'd like to know just what those fish count numbers really were within the residual pool during draw-down as compared to pre-project. The fact that there was a 57/1 decrease in the volume of water should show an equal increase in fish in the residual pool if there was no loss. If not, and there was a massive fish kill within the dam, then this simply needs to go on record instead of being omitted from the record. I saw dead fish rolling past during these turbidity events last year. I'm surprised there was no mention of such fish mortality within the SIR. Anyway, I have provided the highlights of my discussion with Mr. Willis below because I believe it is important that others better understand this issue which was not addressed within the SIR to any degree of reliability.

Sincerely,

David Rodriguez
87984 Heather Drive
Springfield, Oregon 97478
(541) 747-5093